

37 Am. Jur. 2d Fraud and Deceit § 190

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Fraud and Deceit

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IV. False Representations

G. Representations and Statements as to Particular Matters

4. Credit, Solvency, and Financial Standing

§ 190. Representations as to credit or financial condition of firm, corporation, or association

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  27, 28

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[Misrepresentations as to financial condition or credit of third person as actionable by one extending credit in reliance thereon, 32 A.L.R.2d 184](#)

Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 36](#) (Complaint, petition, or declaration—For damages—Intentional misrepresentation of true financial condition of corporation to which plaintiff had extended credit)

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 139](#) (Complaint, petition, or declaration—For damages—Misrepresentation as to solvency of defendant's company—Plaintiff induced to discount notes on company's endorsement and guarantee)

The rule that a false representation regarding the credit, solvency, or financial condition of a third person is actionable¹ applies with particular force where a person makes false representations as to the financial status of the person's own firm.² The rule also

applies where the representations are made concerning another firm, especially where they are based on inadequate investigation and information.³ It has been stated, however, that a representation as to the credit condition of a company is an opinion and is not actionable.⁴

False representations as to the financial condition or solvency of a corporation may constitute the basis of an action in fraud against anyone making such representations.⁵ Misrepresentations of officers, directors, and stockholders of corporations as to the financial condition of such corporations are actionable by third persons who, in reliance on such representations, deal with or extend credit to the corporation and incur losses thereby.⁶ Similarly, representations by partners concerning the financial condition of the partnership may be actionable.⁷ A representation by members of an association that there are sufficient funds in the possession of the association to pay fully in cash all persons performing work in the erection of a building for the association is not promissory in character, but has a direct relation to an existing state of facts, and is therefore actionable where it is false.⁸

Where a corporate director or officer makes assurances of the payment of overdrafts and checks, while knowing the corporation is insolvent, there is no fraud as there has been no misrepresentation of the corporation's financial condition absent some disclosure regarding the financial condition of the corporation.⁹

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Footnotes

- 1 § 187.
- 2 *Tindle v. Birkett*, 171 N.Y. 520, 64 N.E. 210 (1902).
A blanket assertion of reliance on oral representations about a company are insufficient where the party making such allegation is unable to recall the content of these oral representations. *Vreeken v. Lockwood Engineering, B.V.*, 148 Idaho 89, 218 P.3d 1150 (2009).
The principal of a debtor corporation did not knowingly misstate or omit a material fact with the intention of inducing the creditor's reliance on the misstatement, which caused it to reasonably rely on that misrepresentation, where the creditor knew that the debtor was in financial distress when he requested additional credit, he made the request as part of a good faith effort to cure the debtor's default, and he never intended to fail to repay the debtor's creditors. *Dowlings, Inc. v. Homestead Dairies, Inc.*, 88 A.D.3d 1226, 932 N.Y.S.2d 192 (3d Dep't 2011).
- 3 *Duncan v. Stoneham*, 253 N.Y. 183, 170 N.E. 571 (1930).
- 4 *Evans v. Gray*, 215 So. 2d 40 (Fla. 3d DCA 1968).
- 5 *Kirby v. Davis*, 91 S.W.2d 215 (Mo. Ct. App. 1936); *Dash v. Jennings*, 272 A.D. 1073, 74 N.Y.S.2d 881 (2d Dep't 1947).
- 6 *Link v. Cox*, 529 S.W.2d 189 (Mo. Ct. App. 1975).
- 7 *Dolce v. Dolce*, 108 Ill. App. 3d 817, 64 Ill. Dec. 363, 439 N.E.2d 1028 (1st Dist. 1982).
- 8 *Samuel W. Hurowitz, Inc., v. Selkin*, 241 A.D. 269, 271 N.Y.S. 576 (1st Dep't 1934).
- 9 *Marine Midland Bank v. Meehan's Exp., Inc.*, 72 A.D.2d 624, 420 N.Y.S.2d 788 (3d Dep't 1979).

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